Supreme Court, U.S.
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92-53

No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

MARK KONRAD,

Petitioner

vs

THE PEOPLE OF THE STATE OF MICHIGAN,

Respondent

PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT

OF THE STATE OF MICHIGAN

Michigan Supreme Court No 92590

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

WAS PETITIONER PLACED TWICE IN JEOPARDY FOR THE SAME ACT WHEN, AFTER THE JUDGMENT OF THE MICHIGAN COURT OF APPEALS REVERSING PETITIONER'S CONVICTIONS AND DISCHARGING PETITIONER BECAME FINAL, THE MICHIGAN SUPREME COURT GRANTED THE STATE'S OUT OF TIME APPLICATION FOR LEAVE TO APPEAL AND VACATED THE JUDGMENT OF THE MICHIGAN COURT OF APPEALS?

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IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1991

MARK KONRAD,

Petitioner

vs

THE PEOPLE OF THE STATE OF MICHIGAN,

Respondent

PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT

OF THE STATE OF MICHIGAN

Michigan Supreme Court No 92590

PETITION FOR A WRIT OF CERTIORARI

Mark Konrad, by his attorney, Carl Ziemba, prays that a writ of certiorari issue to review the Order of the Michigan Supreme Court entered in this cause on March 5, 1992, reconsideration denied by Order dated May 29, 1992.

ORDERS BELOW

The Order of the Michigan Supreme Court is reported in summary fashion in People v Konrad, 439 Mich 947 (1992). The full Order of the Court is printed below as Appendix, 1a.

STATEMENT OF JURISDICTION

The Order appealed from was entered on March 5, 1992. The Order denying reconsideration is dated May 29, 1992. This Court's jurisdiction is invoked under 28 USC Sec. 1257(3).

In addition, since the order appealed from subjects petitioner to jeopardy twice for the same act, review by this Court at this time is appropriate under the principles set forth in Abney v United States, 431 US 651 (1977).

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the United States Constitution provides, in pertinent part:

'No person shall . . . be subject for the same offense to be twice put in jeopardy of life or limb; . . .'

The Fourteenth Amendment provides, in pertinent part:

'. . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdictions the equal protection of the laws.'

STATEMENT OF THE CASE

Petitioner was convicted by jury in the Recorder's Court for the City of Detroit of the offenses of possession of over 650 grams of cocaine and of conspiracy to possess over 650 grams of cocaine. He was sentenced to life imprisonment with no hope of parole on each conviction. He appealed his convictions as a

matter of right in timely manner to the Michigan Court of Appeals and raised several issues of error.

Addressing but one of the issues raised by petitioner, the Michigan Court of Appeals ruled that the trial court had lost jurisdiction to try petitioner because the state had violated provisions of the Interstate Agreement on Detainers, and the Michigan Court of Appeals reversed petitioner's convictions and ordered his discharge without day.

The state filed in timely manner a motion for rehearing in the Michigan Court of Appeals; this motion was duly denied.

The state then filed an application for leave to appeal in the Michigan Supreme Court. However, the state did not file its application for leave to appeal within the 21 days provided for by the rules.

The Michigan Supreme Court considered the said application as a delayed application for leave to appeal, and 'in lieu of granting leave

to appeal', the Court vacated the judgment of the Michigan Court of Appeals and remanded the case to the trial court for a hearing and findings on the question whether defendant ever made a request for a final disposition of his case.

Petitioner in timely manner filed his motion for reconsideration of the said Order. Petitioner argued that when the state failed to file its application for leave to appeal in the Michigan Supreme Court within the 21 days allowed by the rules, the judgment of the Michigan Court of Appeals became final, and that the granting to the state by the Michigan Supreme Court of leave to file a delayed appeal and the vacating of the final judgment of the Michigan Court of Appeals constituted a violation of petitioner's right under the Fifth Amendment against double jeopardy.

The Michigan Supreme Court denied reconsideration. See Order in Appendix, 5a.

The trial court, following the reversal of

petitioner's convictions by the Michigan Court of Appeals, issued an order dismissing the charges against petitioner. See Order in Appendix, 7a.

Petitioner was discharged from custody and at date hereof is at liberty and gainfully employed.

REASONS FOR GRANTING THE WRIT

The state of Michigan has a two tier appellate court system. Appeals as of right, both civil and criminal, are taken to the Michigan Court of Appeals. Any party dissatisfied with the judgment rendered by the Michigan Court of Appeals may, within 21 days of that judgment, file an application for leave to appeal in the Michigan Supreme Court. In its discretion, the Michigan Supreme Court may grant leave to appeal.

Petitioner's position in applying for certiorari is the following:

(1) Under Michigan Court Rules, a party

has 21 days from the entry of a judgment of the Michigan Court of Appeals to file an application for leave to appeal in the Michigan Supreme Court, an appeal to the Michigan Supreme Court being discretionary;

(2) the 21 day provision is jurisdictional;

(3) when the state failed to file its application for leave to appeal in the Michigan Supreme Court within the 21 days provided by the Rules, the judgment of the Michigan Court of Appeals became final;

(4) when the Michigan Supreme Court considered and granted the state's delayed application for leave to appeal and vacated the judgment of the Michigan Court of Appeals which had become final, the Michigan Supreme Court in effect laid the original charges against petitioner a second time, in violation of

petitioner's right not to be placed twice in jeopardy for the same act.

(1)

THE STATE HAD 21 DAYS IN WHICH TO FILE ITS APPLICATION FOR LEAVE TO APPEAL IN THE MICHIGAN SUPREME COURT.

The Michigan Supreme Court's general review power is grounded in Michigan Constitution 1963, art 6, sec 4, which provides in part:

> 'The supreme court shall have general superintending control over all courts; power to issue, hear and determine prerogative and remedial writs; and appellate jurisdiction as provided by rules of the supreme court.'

The judicial powers of the Michigan Supreme Court have been further defined in Michigan Compiled Laws [MCL] 600.212 - 600.223. Inter alia, the Michigan Supreme Court is granted appellate jurisdiction over any matter or question of law brought before the Court in an

authorized manner, and the Court is granted the power to promulgate and amend general court rules governing the practices and procedures in all courts of record. These rules may include practices and procedures for the method of review of decisions from inferior tribunals. See generally People v Coles, 417 Mich 523, 533 (1983).

The Michigan legislature duly adopted MCL 600.232 which provides:

> 'Appeals to the supreme court may be by right or by leave as provided by the rules of the supreme court, except as otherwise provided by statute.'

The Michigan Supreme Court has promulgated the following rule known as Michigan Court Rules 1985 [MCR], 7.301:

> '(A) **Jurisdiction**. The Supreme Court may:
>
> '(2) review by appeal a case pending in the Court of Appeals or after decision by the Court of Appeals (see 7.302);'

Michigan Court Rule 1985, Rule 7.302 provides as follows:

> **'APPLICATION FOR LEAVE TO APPEAL**
>
> **'(A) What To File.**
>
> To apply for leave to appeal, a party must file:
>
> '(1) 8 copies of an application for leave to appeal (one must be signed) consisting of the following: . . .'
>
> **'(C) When to File.**
>
> '(2) Other Appeals. Except as provided in subrule (C)(4), in other appeals the application must be filed within 21 days
>
> '(b) after the filing of the opinion appealed from; or
>
> (c) after the Court of Appeals clerk mails notice of an order denying a timely filed motion for rehearing.'

Thus, it is clear that the State had 21 days in which to file its application for leave to appeal in the Michigan Supreme Court.

(2)

THE 21 DAY LIMITATION FOR THE FILING OF AN APPLICATION FOR LEAVE TO APPEAL IS JURISDICTIONAL.

This was made clear by the Michigan Supreme Court repeatedly in cases in which the Court ruled that an appeal not timely filed conferred no appellate jurisdiction on the Court.

Petitioner begs this Court's pardon for presenting the following extensive list of cases, but petitioner feels it important to establish that the Michigan Supreme Court by its own rulings has repeatedly held that timeliness of an appeal is jurisdictional.

In Potaschnik v Kaimola, 216 Mich 406, 407 (1921), the Court said:

'[I]n Munroe, Boyce & Co v Ward, 207 Mich. 34, we held that the provision requiring the filing of claim of appeal within 20 days was likewise mandatory, and that the court was without jurisdiction to entertain the ap-

peal.'

In Bolton v Cummings, 200 Mich 234, 235 (1918), the Court said:

'A judgment for the defendant was entered in this case June 21, 1916, in Kent circuit court. August 9, 1917, the writ of error was issued. No motion for an extension of time was granted by this court, or by any of the Justices thereof. The year in which a writ of error might issue without such extension had expired. No motion to dismiss the writ has been filed, and appellee files a brief on the merits. The right of appeal is statutory; unless taken within the time fixed by the statute the appellate court does not acquire jurisdiction; jurisdiction is not acquired by waiver or consent. [citations omitted] This court should, of its own motion, dismiss a case which the record discloses it has not the jurisdiction to hear and determine. [citation omitted]. The writ

of error will be dismissed.' [emphasis added]

In Puffer v Clark, 202 Mich 169, 193 (1918), the Court said:

'[I] consider whether it is true, as is claimed, that this court is without jurisdiction to hear and determine the appeals because they were made too late. We have held that parties - at least when not prevented from appealing by the action or non-action of officers of the court - must perfect appeals within the time limited in the statute, see Perkins v Perkins, 173 Mich. 690, and cases cited in the opinion, and that, failing to do this, the right to appeal is lost and cannot be restored by the court.'

In Perkins v Perkins, 173 Mich 690, 695 (1913), the Court said:

'We hold, in conformity with repeated decisions of the court, that the statute fixes a time within which appeals in chan-

cery must be perfected, and that a party desiring to appeal must within that time perfect his appeal; for failure to do which, the right to appeal is lost and cannot be restored by the court.'

In Township of Cooper v Little, 220 Mich 62, 63-64 (1922), the Court said:

'This court in numerous cases has held that the right to appeal is statutory, that the mandatory provisions of the statute must be complied with in order to give this court jurisdiction of the case, that jurisdiction may not be conferred by consent and that this court will of its own motion decline to consider cases upon the merits which it had not jurisdiction to decide.'

In Bulton v Cummins, 200 Mich 234, 235 (1918), the Court said:

'The right to appeal is statutory; unless taken within the time fixed by the statute

the appellate court does not acquire juris diction; jurisdiction is not acquired by waiver or consent.'

In Munroe, Boyce & Co. v. Ward, 207 Mich 369, 378 (1919), the Court said:

'The right of appeal is a statutory one, and unless the mandatory provisions of the statute are complied with the court has no jurisdiction to entertain the appeal.'

In Hoffman v. Security Trust Co, 256 Mich 383, 385 (1931), the Court said:

'An appeal is perfected when notice of appeal is filed within the required time. Michigan Court Rules Nos. 56 and 57. Both the act and time of filing are jurisdictional. Default in either destroys the right of appeal and leaves appellant remediless by way of appeal except upon special leave of the appellate court. Michigan Court Rule No. 57, §2.'

In Chicago, D & CGTJ R Co v Simons, 210 Mich 418, 420 (1920), the Court said:

'This court, in consonance with other courts of last resort, has uniformly held that appeals are statutory, do not exist at common law, and that the legislature in its discretion may prescribe in what cases and under what circumstances appeals may be taken. [citations omitted.]'

Cited with approval: Moore v Spangler, 401 Mich 360, 369 (1977).

Under Michigan law, every person convicted of crime has an appeal as of right to the Michigan Court of Appeals. Michigan Constitution, 1963, Article 1, Section 20.

GCR 1985, 7.204(A) pertaining to appeals as of right to the Michigan Court of Appeals provides that:

'The time limit for an appeal of right is jurisdictional.'

GCR 1985, 7.205(F) provides for the filing of

an application for late appeal in the Michigan Court of Appeals in cases where the defendant has not timely filed an appeal as of right. Of course, it is entirely discretionary with the court as to whether the late appeal shall be allowed.

It might be argued that the Court has the power to excuse a short delay in the filing of an application, but, as the Michigan Court recognized in a similar context, if the Michigan court can excuse a short delay, it can excuse a delay of any length, and a criminal defendant who has been released from custody under a final judgment of the Michigan Court of Appeals would never feel safe and secure that the Michigan Supreme Court will not, at some point, re-instate his conviction. In Perkins v Perkins, 173 Mich 690, 694 (1913), the Court said:

> 'It is apparent that, if the parties in such a cause may by consent extend the statutory period for appealing one day, they may extend it indefinitely, and, if this right could be

admitted, appeals in chancery would not be controlled by the authority without which they could not be taken at all, but by the convenience of counsel.'

Nor can it be said that somehow this petitioner consented to the action of the Michigan Supreme Court by some action of his or omission to act, because, as the Michigan court said In J F Hartz v Lukaszewski, 200 Mich 230, 232,233 (1918):

'Jurisdiction cannot be conferred by consent or inadvertence' and 'That no right of appeal exists in this State except as conferred by statute, is well settled.'

Further, the Michigan Supreme Court has held that it cannot enlarge the state's right to appeal as defined in statute. Thus, in In re People v Burton, 429 Mich 133, 142 (1987), where the trial court granted the defendant a new trial on motion and the prosecution sought and

obtained superintending control from the Michigan Court of Appeals which then reversed the trial court, the Court reversed the Court of Appeals saying that MCL 770.12 did not provide for an appeal by the people of a trial court's decision to grant a new trial in a criminal case and that '[i]ssuing an order of superintending control is an improper means of granting appellate review when an appeal is not provided for by general law'. It would amount to a collateral attack on the trial court's order where no appeal was provided by law'. See also: United States v Hundley, 858 F2d 58, 61 (CA2 1988).

(3)

WHEN THE STATE FAILED TO FILE ITS APPLICATION FOR LEAVE TO APPEAL IN THE MICHIGAN SUPREME COURT WITHIN THE 21 DAYS PROVIDED BY THE RULES, THE JUDGMENT OF THE MICHIGAN COURT OF APPEALS BECAME FINAL.

This is clear by implication from the decisions of the Michigan Supreme Court which hold that a timely application for leave to appeal to the Michigan Supreme Court from a decision of the Michigan Court of Appeals effectively stays the operation of the decision of the Michigan Court of Appeals.

Thus, in People v George, 399 Mich 638, 639 (1977) the Court said:

> 'The defendant was convicted of second-degree murder . . . . Appeal by the defendant was timely taken to the Court of Appeals and on June 14, 1976 that Court issued its opinion which concluded with the words, "Reversed and remanded". [citation omitted] On July 2, 1976 the plaintiff filed an application for leave to appeal with this Court. The application to this Court was timely, having been filed within 20 days of the issuance of the Court of Appeals opinion. See GCR 1963, 853.2(1).

That application to this court has been neither denied nor granted and therefore remains pending before this Court.

* * *

'If this Court denies the pending application for leave to appeal, the Court of Appeals judgment then becomes the final adjudication of this case and may be enforced in accordance with its terms, under GCR 1963, 853.2(2).'

And in People v Phillips, 416 Mich 63, 74 (1982) the Court said:

'A timely application for leave to appeal to this Court from a decision of the Court of Appeals effectively stays the Court of Appeals decision as a final adjudication, see People v George, 399 Mich 638 (1977), and denies it precedential force until denial of the application for leave to appeal in this Court or some other disposition of the case is announced.'

And in Moore v City of Detroit, 424 Mich 905, 906 (1986) the Court said:

'The defendants-appellants filed a timely application for leave to appeal after the Court of Appeals order of January 13, 1986, denying their timely application for rehearing. Pursuant to MCR 7.215(F)(1), the trial court cannot execute the Court of Appeals judgment until such time as the Court of Appeals clerk, under MCR 7.210(I), or the Supreme Court clerk, under MCR 7.311(B), returns the record to the trial court along with a certified copy of the judgment of the Court of Appeals. Since the clerk of the Court of Appeals is not empowered to return the record to the trial court until after the period for the filing of a timely application for leave to appeal has expired, MCR 7.210(I) and the defendants-appellants filed such a timely application, then the record cannot be returned to the trial court until final adjudication of the

matter by this Court, MCR 7.311(B).Cf. People v George, 399 Mich 638 (1977);People v Phillips, 416 Mich 63 (1982).'

It must follow that an application out of time, that is, a delayed application for leave to appeal, to the Michigan Supreme Court, does not stay the operation of the decision of the Michigan Court of Appeals as a final judgment. If the filing of an out of time application for leave to appeal does not stay the operation of the decision of the Michigan Court of Appeals, it must mean that the decision of the Michigan Court of Appeals is the final judgment in the case.

The situation is the same as though the state did not appeal from the judgment of the Michigan Court of Appeals; and the same legal effects would result, namely, that the decision of the Michigan Court of Appeals would became the final judgment in the case.

The principle involved is the same enunciated in the following cases:

German American Seminary v Saenger, 66 Mich 249, 252 (1887):

'As Stroh did not appeal, of course the decree stands as a judgment.'

Bassett v Trinity Bldg Co, 254 Mich 207, 210 (1931):

'The case resulted in a judgment in favor of Quail. . . . The latter thereupon made a motion to set aside the judgment. . . . The motion was denied on March 29, 1930, and no appeal taken. The judgment thus became res adjudicata.'

(4)

WHEN THE MICHIGAN SUPREME COURT GRANTED THE STATE'S DELAYED APPLICATION FOR LEAVE TO APPEAL AND VACATED THE JUDGMENT OF THE MICHIGAN COURT OF APPEALS WHICH

HAD BECOME FINAL, THE MICHIGAN SUPREME COURT IN EFFECT LAID THE ORIGINAL CHARGES AGAINST PETITIONER A SECOND TIME, IN VIOLATION OF PETITIONER'S RIGHT NOT TO BE PLACED TWICE IN JEOPARDY FOR THE SAME ACT.

See Fifth Amendment, United States Constitution. Benton v Maryland, 395 US 784 (1969).

The following Michigan statute, MCL 770.12, grants the state the right to appeal in certain criminal cases:

'(1) The people of this state may take an appeal of right in a criminal case, if the protection against double jeopardy under section 15 of article I of the state constitution of 1963 and amendment V of the constitution of the United States would not bar further proceedings against the defendant, from either of the following:

'(a) A final judgment or final order of the

circuit court or recorder's court, except a judgment or order of the circuit court or recorder's court on appeal from any other court.

'(b) A final judgment or order of a court or tribunal from which appeal of right has been established by law.'

It is clear that the Michigan legislature recognized that a prosecutor's appeal must never violate a criminal defendant's double jeopardy rights.

And it is certain that the Michigan Supreme Court cannot grant any relief to the state which infringes upon or violates a criminal defendant's Fifth Amendment right not to be placed twice in jeopardy for the same act.

What the Michigan Supreme Court did in its order of March 5, 1992 was not only to reinstate charges against petitioner which the Michigan court of Appeals in its final judgment

ordered dismissed, but also to remand the case to the trial court for additional adducement of evidence. This constituted the subjecting of petitioner to a second trial.

This Court made that much clear in United States v Martin Linen Supply Co, 430 US 564, 569 (1977):

> 'Thus Wilson held that the "controlling constitutional principle" focuses on prohibitions against multiple trials. At the heart of this policy is the concern that permitting the sovereign freely to subject the citizen to s second trial for the same offense would arm Government with a potent instrument of oppression.'

An appeal by the government from the grant by the trial court of a motion for acquittal after a jury verdict of guilty, is permitted because if the government is successful there is no new trial, but merely a re-instatement of the jury verdict. United States v Jenkins, 420 US 358 (1975).

It is undoubtedly true that each state may establish the right to appeal in certain cases or not, according to the lights of the legislature, and each state may lay down rules for the exercise of the right to appeal. But in doing so, the state cannot infringe upon the rights which an individual litigant has under the United States Constitution. Undoubtedly, the Michigan Supreme Court may, in its discretion and in its exercise of its sense of equity, grant parties leave to appeal on delayed applications for leave to appeal. But, the Michi gan Supreme Court was not and is not at liberty in this case to violate petitioner's right under the federal constitution not to be twice put in jeopardy for the same act.

This was made clear by this Court in Missouri v Lewis [Bowman v Lewis], 101 US 22,30, 25 L Ed 989, 992 (1879):

'It is the right of every State to establish such courts as it sees fit, and to prescribe their several jurisdictions as to territorial

extent, subject-matter and amount, and the finality and effect of their decisions; provided it does not encroach upon the proper jurisdiction of the United States, and does not abridge the privileges and immunities of citizens of the United States; and does not deprive any person of his rights without due process of law, nor deny to any person the equal protection of the laws, including the equal right to resort to the appropriate courts for redress.' [emphasis added]

CONCLUSION

Petitioner prays this Court issue a Writ of Certiorari to the Michigan Supreme Court.

Respectfully submitted,

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Detroit, Michigan
June 10, 1992

A P P E N D I X

ORDER OF MICHIGAN SUPREME COURT VACATING COURT OF APPEALS JUDGMENT

Michigan Supreme Court

Lansing, Michigan

Michael F. Cavanagh

Chief Justice

Charles L Levin

James H Brickley

Patricia J Boyle

Dorothy Comstock Riley

Robert P Griffin

Conrad L Mallett, Jr.

Associate Justices

ORDER

Entered: March 5, 1992

92590

92590(4)

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,
Cross-Appellee,

SC: 92590

v

COA: 113526

LC: 88-50061

MARK KONRAD,

Defendant-Appellee,
Cross-Appellant

On order of the Court, the delayed application for leave to appeal is considered and, pursuant to MCR 7.302(F)(1), in lieu of granting leave to appeal, we VACATE the judgment of the Court of Appeals. We REMAND the case to the Court of Appeals which shall, while retaining jurisdiction, remand the matter to the Recorder's Court for the City of Detroit for a

hearing and findings to include, without limitation, whether the defendant ever made a request for a final disposition of his case and, if so, the date of such request.

In light of this order, the defendant's conditional application for leave to appeal as cross-appellant with respect to issues not considered by the Court of Appeals is DENIED as moot.

We do not retain jurisdiction.

Boyle, J., states as follows:

I join in the order of remand to the Recorder's Court for the city of Detroit for a hearing but would specify on remand that the Recorder's Court is to make findings that include, without limitation, whether the defendant ever made a request for a final disposition of his case and, if so, the date of such re quest. In addition, the Court of Appeals, on receipt of such findings and other findings deemed pertinent by the Recorder's Court, should

reconsider the defendant's appeal. if the Recorder's Court finds that the defendant made such a request at a time less than 180 days (subtracting delay attributable to the defen dant) before the November 1, 1988, trial, then the Court of Appeals on reconsideration may not find a violation of the 180-day provision of Article III of the Interstate Agreement on Detainers, MCL 780.601; MSA 4.147(1), by a calculation method that adds any time prior to the defendant's request for a final disposition of his case to the time between the defendant's request for final disposition of his case and the trial. Article III(a) provides in pertinent part that the defendant "shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prose-cuting officer and the appropriate court of the prosecuting officers' jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint . . .

." (Emphasis added.)

70220

I, CORBIN R DAVIS, Clerk of the Michigan Supreme Court certify that the foregoing is a true and complete copy of the order entered at the direction of Court.

March 5, 1992 /s/ Corbin R. Davis

Clerk

ORDER OF MICHIGAN SUPREME COURT

DENYING RECONSIDERATION

Michigan Supreme Court

Lansing, Michigan

Michael F. Cavanagh

Chief Justice

Charles L Levin

James H Brickley

Patricia J Boyle

Dorothy Comstock Riley

Robert P Griffin

Conrad L Mallett, Jr.

Associate Justices

ORDER

Entered: May 29, 1992

92590(48)

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

SC: 92590

v COA: 113526

LC: 88-50061

MARK KONRAD,

Defendant-Appellee,

On order of the Court, the motion for reconsideration of this court's order of March 5, 1992 is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

I, CORBIN R DAVIS, Clerk of the Michigan Supreme Court certify that the foregoing is a true and

complete copy of the order entered at the direction of Court.

May 29, 1992 /s/ Corbin R. Davis

Clerk

ORDER OF TRIAL COURT DISMISSING CHARGES

STATE OF MICHIGAN

IN THE RECORDER'S COURT FOR THE CITY OF DETROIT

THE PEOPLE OF THE STATE OF MICHIGAN

Plaintiff,

vs CASE NO. 88-500061

Defendant,

MARK KONRAD

_____/

ORDER

At a session of said Court held in the City of Detroit, Frank Murphy Hall of Justice, County of Wayne, State of

Michigan on June 25, 1991.

PRESENT: Hon. Vera Massey Jones

HONORABLE VERA MASSEY JONES

Recorder's Court Judge

The Court of Appeals having vacated the Defendant's Convictions and sentences.

IT IS HEREBY ORDERED that the charges are dismissed.

PRESENT: /s/ Vera Massey Jones

Recorder's Court

Judge

City of Detroit

Third Judicial

Circuit Court

of Michigan